



# STATE OF IOWA

THOMAS J. VILSACK, GOVERNOR  
SALLY J. PEDERSON, LT. GOVERNOR

DEPARTMENT OF NATURAL RESOURCES  
JEFFREY R. VONK, DIRECTOR

August 5, 2003

Shook, Hardy & Bacon, LLC  
Attn. Jane Schilmoeller  
84 Corporate Woods  
10801 Mastin, Suite 1000  
Overland Park, Kansas 66210-1671o

RE: Former Manufactured Gas Plant Site (MGP)  
7<sup>th</sup> Street between 10<sup>th</sup> and 11<sup>th</sup> Ave., Council Bluffs, Iowa



Dear Ms. Schilmoeller:

The Department has reviewed available information regarding the ownership and operational history of this former MGP, including the research you have provided on behalf of Aquila, Inc. I have also received a written response to my letter dated March 31, 2003 from counsel representing Omaha Public Power District (OPPD). A copy of my letter and the response is enclosed for your reference. I received a response to my letter dated March 31, 2003 from counsel for TXU, Inc. a copies of which are enclosed. I have also received some additional information regarding the history of Council Bluffs Gas Company through the Delaware Secretary of State records, which I am enclosing for your reference.

The Department has had some contacts with the Iowa Department of Transportation, and we intend to follow up with them regarding potential responsibility arising out of their drilling activities, which appear to have struck an old gasholder. I have also had some difficulty reconciling property ownership of the lots within Block 12 which is the block on which the K.C. Peterson Construction Company has buildings. For example, the information you sent me off an abstract shows lots 3, 8 and 11 of block 12 being acquired by K.C. Peterson from Utilicorp in 1986. However, the Pottawatomie County Assessor and Auditor's database shows the whole parcel being owned by Peoples Natural Gas. The best information I could get from the county assessor and auditor as to ownership of lots in Block 11 shows Linda Whisler as the owner of a southwest corner lot. Northern Natural Gas appears to own the rest of Block 11. The assessor and auditors office could not find the warranty deeds transferring ownership from Internorth to Utilicorp in 1986. Can you help me get the ownership on Block 11 and 12 clarified?

The Department has consulted with EPA Region 7. Region 7 has reviewed the matter and agreed that further site assessment needs to be conducted at this site, which will likely include parts of Block 11 and Block 12 where the former gas plant structures have been identified. This is especially true in light of the proposed development in this area. It is my understanding EPA has been briefed by representatives of Council Bluffs regarding potential future plans for this area.

Without getting into a lot of detail regarding liability analysis, the Department has decided that Aquila, Inc. should take the lead in initiating further site assessment of the property they own and depending on the results of the assessment adjoining properties. The factual and legal issues surrounding liability of

"successor corporations" is too ambiguous at this time and we believe assessment work needs to begin. We intend to continue to research other potentially responsible parties and particularly, we will be discussing further assessment by the Iowa DOT in the area they acquired for bridging and where they apparently drilled through a gasholder.

The Department is relying on both State of Iowa law as discussed in *Blue Chip Enterprises et al v. IDNR*, 528 NW2nd 619 (Iowa 1995) (*Blue Chip*) as well as CERCLA in placing liability on Aquila in its capacity as a current property owner.

Oversight of this project was deferred to the IDNR from EPA Region 7. Region 7 is prepared to take back oversight of the project and enforce federal law if the IDNR is not able to achieve environmental objectives under state law. It is well settled under CERCLA that a current owner of a facility can have responsibility for remedial action regardless of whether they caused the release of hazardous substances.

TXU, Inc. has indicated they may be willing to negotiate some kind of cost sharing based on their still uncertain affiliation with Lone Star Gas Company and its affiliation with Council Bluffs Gas Company. Omaha Public Power District (OPPD) appears to take a rather firm position they have no environmental liability based on current facts. The DNR has decided that any issues of contribution should be pursued amongst these parties rather than trying to negotiate a cost sharing agreement to commence assessment activities. We intend to actively be involved in attempting identify responsible parties should any cleanup action be required.

Depending on Aquila's response to this position, the Department may suggest entering into a consent order, enrolling the site into the Iowa Land Recycling Program, continuing on a voluntary basis without an order or issuance of a unilateral order. We may also consider referral back to EPA Region 7. The Department is however anxious that assessment work commence at the site.

The Department would like to set up a meeting with Aquila in the next few weeks to discuss the scope of assessment and a plan for how to proceed at this point. We may also want to bring in the IDOT. The project manager will be Mick Leat who can be reached at 515-281-8045 and as usual feel free to contact me for further discussion.

I would appreciate it if you could respond to discuss Aquila's intentions and set up a meeting.

Sincerely,



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Copy: DNR  
Encl. DNR letters to TXU and OPPD dated March 31, 2003, OPPD Response letter  
Delaware Secretary of State records on Council Bluffs Gas Company